

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
1998 Biennial Regulatory Review --) WT Docket No. 98-205
Spectrum Aggregation Limits)
for Wireless Telecommunications Carriers)
)

To: The Commission

**COMMENTS OF
NORTHCOAST COMMUNICATIONS, L.L.C.**

Northcoast Communications, L.L.C., ("Northcoast") by its attorneys and pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, submits these Comments in the captioned proceeding,¹ which explores whether the Commission should repeal, modify or retain the 45 MHz Commercial Mobile Radio Service ("CMRS") spectrum cap.² As explained below, Northcoast urges the Commission to retain the 45 MHz spectrum cap until such time as all originally-licensed "small business" PCS and SMR entities³ have begun offering commercial service. In addition, Northcoast opposes the petition of the Cellular

¹ *Notice of Proposed Rulemaking in WT Docket No. 98-205*, FCC 98-308, released December 10, 1998 ("NPRM").

² *See* 47 C.F.R. § 20.6.

³ Specifically, those entities that qualified under the FCC's rules as "small businesses" and participated in the original auctions for the C and F block broadband PCS frequencies and 800 MHz SMR frequencies, won licenses, and have begun building out their systems.

Telecommunications Industry Association ("CTIA") requesting forbearance from enforcement of the CMRS spectrum cap, pursuant to Section 10 of the Communications Act.⁴

Northcoast is a qualified "small business" under the FCC's designated entity rules, and holds 49 D, E and F block licenses to provide broadband PCS in various markets located in the northeastern and midwestern portions of the United States.⁵ Therefore, Northcoast has a vested interest in the outcome of this proceeding. As a small business, Northcoast is not able to devote the time nor the resources necessary to prepare and submit lengthy explanations and empirical economic analyses supporting its position that elimination the CMRS spectrum cap is premature. However, as a small business F block licensee that is on the verge of launching commercial PCS service in its first market, Northcoast can comment knowledgeably about how "competition" impacts small businesses that are entering the CMRS market.

Northcoast recognizes the Commission's statutory obligation under Sections 10 and 11 of the Communications Act to regularly review its regulations, and to eliminate or forbear from applying to telecommunications carriers any unnecessary rules. However, the Commission must balance these obligations against its (still effective) affirmative statutory obligation under Section 309(j)(3) of the Communications Act to "promote economic opportunity and competition ... by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses ...".⁶

⁴ 47 U.S.C. § 160.

⁵ See *Public Notice* DA 97-883, released April 28, 1997; *Memorandum Opinion and Order*, DA 97-1345, released June 27, 1997.

⁶ 47 U.S.C. § 309(j)(3)(B).

Northcoast agrees with the Commission that since the original adoption of the CMRS spectrum cap in 1993, "CMRS markets and the wireless telecommunications industry in general have changed considerably."⁷ Certainly, there are now operational broadband PCS and digital SMR systems in many large cities across the United States competing with the two incumbent cellular operators.⁸ However, not all of this change has been or necessarily will be pro-competitive. The CMRS industry, and in particular the cellular industry, is undergoing significant "competition-eroding"⁹ spectrum consolidation. Spurred in large part by the quest for a national or even global CMRS "footprint", in the words of a weekly industry newspaper: "The big become bigger".¹⁰ In the last ten days alone, AirTouch Communications announced that it will merge with the British company Vodafone Group plc for \$62 billion, and Comcast Corp has agreed to sell Comcast Cellular Corp to SBC Communications Inc. ("SBC") for \$1.7 billion.¹¹ Obviously, these recently-announced deals are in addition to the slew of mergers, and mega-mergers with CMRS implications, announced in 1998, including SBC's offer to purchase Ameritech Corp. for \$61.4 billion, Bell

⁷ *NPRM* at ¶ 6.

⁸ Although, the *vast* majority of CMRS markets across the United States do not have an operational broadband PCS small business C or F block system.

⁹ *NPRM* at ¶ 37.

¹⁰ *RCR*, Vol. 18, No. 4, January 25, 1999, at p. 1 ("In the rapidly consolidating wireless industry, the list of available cellular carriers last week got shorter by two.").

¹¹ See "Comcast Leaving Cellular Business With Sale to SBC", *Communications Daily*, Vol. 19, No. 13, January 21, 1999, p. 3; "Vodafone AirTouch Plans Next-Generation Services", *Communications Daily*, Vol. 19, No. 12, January 20, 1999, p. 5.

Atlantic Corp.'s offer to buy GTE Corp. for \$52.8 billion, and AT&T Corp.'s purchase of Vanguard Cellular Systems for \$969.3 million.¹²

When the Commission last addressed the need for the 45 MHz spectrum cap in 1996, it determined that such a cap was still necessary to ensure competition, address anticompetitive behavior in the CMRS market, and to prevent CMRS markets from becoming highly concentrated.¹³ In light of the significant consolidation and concentration that is already occurring *despite* the existence of the CMRS spectrum cap, elimination of or forbearance from applying the spectrum cap at this time will only exacerbate the competition-eroding consolidation that already is occurring within the CMRS industry. Indeed, the further consolidation that would result from elimination of the spectrum cap could also hamper the Commission's desire for increased competition to the local telephone industry through numerous providers of wireless local loop technology.

In the *NPRM* adopted in this docket, the Commission identified several options for addressing CMRS spectrum aggregation issues.¹⁴ Northcoast submits that it is premature to make *any* of the proposed revisions to the CMRS spectrum cap rule at this time. Northcoast does not advocate adoption of a permanent 45 MHz CMRS spectrum cap. However, the existence of the spectrum cap has enabled small businesses to begin to gain a foothold in the CMRS marketplace. Given the obvious, rapidly-accelerating consolidation occurring within

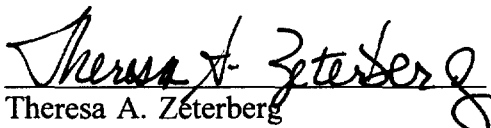
¹² See "Telecomm ranked second for mega-mergers in 1998", *RCR*, Vol. 18, No. 4, January 25, 1999, p. 20.

¹³ See *Report and Order in WT Docket No. 96-59*, 11 FCC Rcd 7824, 7864-87 ("CMRS Spectrum Cap Report and Order").

¹⁴ See *NPRM* at ¶ 8.

the CMRS industry, elimination or relaxation of, or forbearance from enforcing, the spectrum cap prior to the entry of small business PCS and SMR operators will signal the death knell for this segment of the CMRS industry. Accordingly, if any changes are adopted, Northcoast urges the Commission to limit such changes to the establishment of a sunset provision for the spectrum cap, which is tied to small business service commencement in the CMRS marketplace.¹⁵

Respectfully submitted,
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¹⁵ This approach would be similar to the cable/ILEC eligibility restriction adopted in the Local Multipoint Distribution Service, which is presently scheduled to sunset on June 30, 2000. *See* 47 C.F.R. § 101.1003(a).